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Foley, Hoag & Eliot LLP
One Post Office Square
Boston, MA 02109-2170

In re Application of ELSTEIN et al
U.S. Application No.: 09/744,148
Int. Application No.: PCT/IL99/00381
Int. Filing Date: 12 July 1999
Priority Date: 20 July 1998
Attorney Docket No.: LLP-007.01 (21379-701)
For: SOLAR BLIND UV VIEWING APPARATUS
AND CAMERA

DECISION

This is in response to applicants' "Renewed Petition Under 37 CFR §1.181" filed 15 January 2002.

BACKGROUND

On 12 July 1999, applicants filed international application PCT/IL99/00381, which claimed priority of an earlier Israel application filed 20 July 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 03 February 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 11 February 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 22 January 2001 (20 January 2001 was a Saturday).

On 19 January 2001, applicants filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 26 February 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 19 September 2001, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the present application is abandoned as to the United

States for failure to timely respond to the Notification of Missing Requirements within the response period set therein.

On 11 October 2001, applicants filed a copy of an executed declaration purportedly filed on 30 April 2001, a copy of a return postcard receipt, and a petition to accord the declaration an original filing date of 30 April 2001.

On 05 December 2001, this Office mailed a decision dismissing the 11 October 2001 petition on grounds that the return postcard receipt did not contain a declaration in its itemized contents.

On 15 January 2002, applicants filed the present renewed petition along with the affidavit of Robert King.

DISCUSSION

MPEP 503 states, in relevant part,

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. . . . Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

In the present case, the copy of the return postcard receipt does not list a declaration in its itemized contents. The listing of a "Response to Notification of Missing Requirements" is insufficient. As set forth above, incorporation by reference in a postcard receipt does not serve as *prima facie* evidence or receipt of those items. Because applicants have not submitted a properly itemized stamped return postcard receipt, applicants are not entitled to the relief requested. The submission of affidavits, including those by persons with firsthand knowledge of the mailing of the correspondence in question, does not remedy the lack of a proper return postcard receipt.

It is further noted that a legible declaration still has not been filed.

CONCLUSION

For the reasons above, the renewed petition is DISMISSED without prejudice.

If reconsideration on the merits of this decision is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614

Facsimile: 703-308-6459